

# Resolution 18-245, CD1

## Additional Testimony

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**From:** CLK Council Info  
**Sent:** Tuesday, November 13, 2018 5:57 PM  
**Subject:** Parks, Community and Customer Services Speaker Registration/Testimony

## Speaker Registration/Testimony

Name Nancy Salemi  
Phone 808-779-7814  
Email salsalemi@gmail.com  
Meeting Date 11-14-2018  
Council/PH Committee Parks  
Agenda Item CR-376 Resolution 18-245, CD1  
Your position on the matter Oppose  
Representing Self  
Organization  
Do you wish to speak at the hearing? No

Written  
Testimony

Once again I am writing out of concern for what I believe will be an overall negative impact on the environment of the North Shore should the proposed Shark's Cove development go ahead. The issue of over-tourism is a very current and pressing one, not just here, but throughout the world. It is real. It is happening now.

The North Shore is a very finite, very delicate area that simply cannot sustain more development. It is already over-burdened, and we see this very clearly with the traffic and parking congestion on a daily basis. Neither the infrastructure nor a consensus plan seems to exist to accommodate further growth. There is a single lane highway only. Beach erosion threatens the road at Sunset, and homes from Ehukai to Kammies. Last year, experts recommended forming plans without delay to move our communities inland. It's hard to see how a new mall is going to do anything but cause greater and deeper problems.

The development area in question is indeed zoned for commercial use. However, to date, the owners have failed to meet the responsibilities that come with that zoning at every step of the way. They allowed it to become filled with illegal structures, they allowed illegal grading work, they caused great disturbance and inconvenience to the surrounding residents, and did not manage their impact to the environment. As anyone who ever drove through the area on a busy weekend day will attest to, it was nothing short of a circus. Consequently, they received tens of thousands of dollars in

finances, along with multiple orders to stop operations immediately, which they ignored for many months. Finally, corrections were made, and businesses were removed. They now claim to be trying to move forward according to the law. However, at community meetings they are unable to answer with any meaningful detail questions regarding the final land plan, how much parking there will be, what limit on lunch wagons there will be, or how they will manage and regulate waste and impacts to the environment. Given their track record, it is impossible to simply trust them. Indeed, if anything, they are compelled to go further than required if they hope to go any ways towards repairing the relationships with local residents they have so badly damaged by their past reckless negligence.

It's true that tourism is the lifeblood for many people living and working on the North Shore. But the time for a Wild West attitude of frontier profiteering, and for asking for forgiveness rather than permission is long since past. We are obliged to proceed intelligently, with due diligence, in a manner that protects and nurtures our unique and beautiful assets, not in one that threatens to do irreparable damage.

I do not believe the current owners, with their specific development plan, represent the direction we ought to be going in. For this reason, I am against the proposed development.

Also because of my stance I support the Malama Pūpūkea Waimea.

Sincerely,  
Nancy Salemi. Cholo's Homestyle Mexican Restaurant

Testimony  
Attachment  
Accept Terms  
and Agreement

1



November 14, 2018

Ernie Martin, Chair  
 Kymberly Marcos Pine, Vice Chair  
 Carol Fukunaga  
 Ikaika Anderson  
 Brandon J.C Elefante  
 Ann H. Kobayashi  
 Joey Manahan  
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 Trevor Ozawa  
 City Council of the City and County of Honolulu  
 650 South King Street Honolulu, Hawai'i 96813

## Mālama Pūpūkea- Waimea

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 Hale'iwa, HI 96712

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 Bill Quinlan  
 Palakiko Yagodich

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Jenny Yagodich  
 Director of Educational  
 Programs & Community Outreach

Federal 501(c)(3) Non-  
 profit  
 FEIN 27-0855937

State of Hawaii Non-Profit  
 License Number  
 W90711385-01

Testimony in **Opposition** to Resolution 18-245 CD1:  
 SMP for the Development of the Pūpūkea Rural Community Commercial  
 Center – (2018/SMA-41), Developer Hanapohaku LLC  
Hearing, 10:00 am, Wednesday, November 14, 2018

Dear Chair Martin, Vice Chair Pine, and Members,

Mālama Pūpūkea-Waimea (MPW) **strongly opposes** Resolution 18-254 CD1 that would grant a Special Management Area (SMA) Use Permit (SMP) for the proposed development by Hanapohaku LLC of the "Food Truck Mall at Sharks Cove."

MPW asks, **first**, that the Council **deny the permit** as inconsistent with the City and County SMA law and State of Hawai'i Coastal Zone law. **Second**, MPW asks that the Council **stay any proceedings** on the Major SMA permit given that there are *two pending* contested case hearings filed by MPW against the City and County Department of Planning & Permitting (DPP) for a series of four improper "minor" SMAs for development on this property. Should the Council nonetheless pass this unwise resolution, then **third**, MPW requests that the Council **impose five additional conditions** to ensure compliance with the law, which requires the avoidance of impacts on important public trust resources.

As brief background, MPW wishes to alert the Council that the community has raised repeated major objections to the brazen "kapakahiki" development and illegal operations that have taken place on these parcels since the current landowner acquired this portion of the old Ni'imi property in 2014. See, e.g., <https://www.bizjournals.com/pacific/news/2017/04/24/company-racks-up-22-000-in-fines-for-unpermitted.html>

Without consulting the community, Hanapohaku LLC immediately starting operating an illegal Food Truck Mall, with over 10 trucks and a rash of other noisy, polluting, and lucrative activities, on this already-congested location along Kamehameha Highway. These parcels are directly across from the highly scenic and fragile Pūpūkea Beach Park, which borders and protects the Pūpūkea Marine Life Conservation District, one of only three such marine protected areas on O'ahu. The spillover impacts on public trust resources and the negative effects on pedestrian safety, traffic, parking, and accessibility to the ocean were significant and direct - and have lasted for over four years with only minor abatement and then only due to enormous community/neighbor pressure and innumerable complaints to DPP among other agencies.

The strong community opposition was evident at a special meeting of the North Shore Neighborhood Board in April 2016, attended by 180 people. See: <http://www.HawaiiNewsNow.com/clip/12345125/landowner-apologizes-says-sharks-cove-development-will-start-over-from-scratch?autostart=true>

*This developer with unclean hands is now asking the Council to rush through a Major SMA with a proposed plan for permanent, irreversible development of the site. DPP's permit conditions still do not ensure adequate protection for the coastal environment and – inexplicably - allow a cluster of at least six controversial food trucks on site. For the following reasons, MPW asks that the Council really dig into and consider the sordid history and context of this development – and deny, defer, or impose strict conditions.*

## **1. The SMP Should Be Denied**

MPW incorporates by reference here its two sets of comments on the developer's Draft EIS, in particular those comments regarding environmental impact and traffic.

### **a. The Major Permit Is Not Consistent with the SMA or Coastal Zone Laws and Should Not Be Granted**

The proposed development is not consistent with the State of Hawai'i Coastal Zone Management Act, HRS Chapter 205A, or Chapter 25 ROH. HRS 205A-26(2) puts the burden on the City and the developer to demonstrate that "the development **will not** have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options." (Emphasis added.) See also ROH 25-3.2(b).

The record shows that there are too many unanswered questions and indications of significant potential impact such that the development cannot meet this standard. For example, the City and County of Honolulu's Master Plan for Pūpūkea Beach Park, which borders and protects the Pūpūkea Marine Life Conservation District (MLCD) has not been implemented and funded. The Beach Park is already over-run with visitors, commercial and recreational users, and group events such as dive operations. The vegetation and pathways are severely eroded from foot traffic. Except for the areas where MPW has undertaken, with permits, four phases of native plant landscaping and educational sign installation – and a community driven *and funded* effort to renovate the bathrooms and the basketball courts, led by Council Chair Martin – there have been no efforts by the City or State to mitigate impacts of the excessive visitors to the beach park and MLCD. The resources and community, including MPW, has borne the brunt of the impacts and is doing its best to plead for resources from the government agencies responsible for stewardship.

Therefore, for the City to move ahead with this Permit would be a breach of its duty to protect public recreation areas, water quality, and wildlife. The City has not made an effort to implement the Beach Park Master Plan, and the State also does not even have a management plan for the MLCD. While the agencies ignore the needs of the North Shore, it is an increasingly popular destination for at least half of all visitors to this island, and thus under never-ending pressure from an extraordinarily high level of tourism, traffic, trash, and non-point source pollution. This development will only make things worse, not better.

In this context, the City cannot meet the burden under the law to ensure that the North Shore's precious public trust assets will not be negatively impacted by the development. The creation of a "Food Truck Mall" on this property, and commercial operations such as a retail and a restaurant, with all the attendant spillover impacts on the Beach Park and MLCD, are irreversible. MPW is unaware of any analysis by the City that independently assesses the impacts of this development on the Coastal Zone and SMA values protected by the law. The duty is on the City and the developer, not the public, to prove no impact.

As detailed more in MPW's comments on the DEIS, the risk of negative impacts from above-ground runoff (non-point source pollution) and below-ground wastewater migration is significant, contract to the cursory findings of DPP. Water still flows downhill. Non-point source pollution and wastewater will flow above and below the highway into the Beach Park and the MLCD, which is directly across the road. In fact, the development will direct waste flows into a storm drain that has a direct connection to an open channel that leads, in a very short distance, directly into the sand and shoreline of the MLCD.

**b. The EIS for the Permit Was Flawed and Must Be Rejected**

As indicated in the lengthy set of MPW comments on the DEIS (attached to MPW's testimony at the public hearing on the SMA), showing the **non-responses** by G70/Hanapohaku, the underlying Final EIS for this project is also flawed and should be rejected. MPW incorporates all of those SMA Hearing and DEIS comments here and ask the Council to review the EIS, in full, including all of the extensive public comments.

MPW along with many community members who received similar "non-responsive responses" is impressed by G70's ability to dance around and flat out just ignore key questions from the community. The extreme dismissal of community concerns continues a pattern of bad faith conduct by this development. In public, the developer will say it takes the public concerns seriously. However, its actions – and the cursory way it handled public comment on the DEIS – shows the true character of this developer.

In addition to Hanapohaku and DPP not taking comments of the public seriously, Hanapohaku has introduced a completely new alternative in the FEIS, *which therefore evaded public comment*. This alternative that – although it sounds smaller in scale – actually proposes **ten food trucks!** There is no apparent reason, other than deliberate sandbagging, that Hanapohaku did not disclose this alternative to the public in the DEIS. It portends that the developer will ask for more food trucks on site in the future. **The FEIS is fatally flawed and therefore the SMA, which relies on the validity of the FEIS, must be rejected.**

**2. City Council Action on this Permit Must Be Stayed Pending Resolution of the Two Contested Case Hearing Petitions**

MPW objects to the City even processing this SMA when MPW has **two pending unresolved contested case hearing requests against the prior four SMAs** for this project.

One of those petitions (filed in March 2016, over two years ago) has, after over a long delay, been assigned a now-second hearing officer and has a briefing and hearing schedule. The other petition (filed September 2017, over a year ago) has *yet to be assigned* to a hearing officer, despite numerous requests by MPW for consolidation and assignment of a hearing officer.

The matters raised in those challenges to the prior and current (minor) SMA permits for the property involve significant matters of public interest, including the appropriate valuation of SMA permit applications, fair and transparent treatment of the community, and cumulative impacts. In addition, as DPP admits in its report to the Council, the development *has not fulfilled the conditions of its current SMA permit*.

The City's inexplicable inaction on these two contested case petitions has allowed the developer to operate in a virtually lawless "wild wild west" – yet DPP has proceeded, at a good pace, to process the developer's request for a Major SMA Permit and to allow operations in clear violation of the current SMA permit. This is not just, fair, or equitable to the community – or the integrity of the City itself. Nor does it comport with the spirit or letter of the SMA and Coastal Zone laws. DPP's action have violated basic agency administrative best practices and due process, have been arbitrary and capricious, and demonstrate an abuse of discretion.

Nor has the City or Hanapohaku disclosed the accurate and complete resolution of the numerous fines imposed for multiple health, safety, and permitting violations on this property, at one point totaling over \$100,000. At one point, DPP acknowledged that it was accepted "10 cents on the dollar" for the fines owed by Hanapohaku to the City! This is terrible public policy that clearly undermines DPP's authority as a regulatory and enforcement body. This improper practice must not be glossed over by the Council; the practice should be "outed" and changed through the resolution of the legal process.

Without full resolution of these legal challenges to the City's permitting of the current operations, and all of the violations, the City should not even be considering a proposed SMA Major permit to allow a permanent development and to cement the adverse footprint and impact of operations on this site.

### **3. If the Council Approves this Permit, It Must Impose Five New Conditions**

Should this Council approve the Permit, then it must uphold its public trust responsibilities by imposing five addition strict conditions on the Permit, as follows:

#### **a. Clean Hands and Community Transparency.**

All legal proceedings - including contested case matters and appeals; violations of city, state, or federal law; fines; and legal actions or lawsuits involving the developers in their personal or business capacity - must be fully resolved and completely disclosed to the community before any building, development, or operation permits applications are accepted by the City for this development.

#### **b. No Adverse Impact through Neutral Expert Monitoring and Stipulated Penalties.**

The City must ensure that the development has no adverse impact on public trust coastal zone resources and access – including the Kamehameha Highway, the Pūpūkea Beach Park, and the Pūpūkea Marine Life Conservation District.

Therefore, as a condition of the SMP, the developer must: (1) agree to the appointment of a four-member neutral scientific board of experts, to be appointed one by DPP, one by the developer, one by MPW, and one by the Pahoe Road neighborhood; (2) the board will review and monitor the existing conditions of the permit, especially the potential impacts of marine and public resources such as the highway, beach park, and MLCDD; (3) the board will ensure full disclosure of accurate and complete reporting information to the community every four months via a neutral web site and public meetings each quarter with the community association and neighborhood board; (4) the developer shall pay the market rate for the expert board time and expenses, and (5) the board shall set stipulated "impact" penalties for exceedences of the project impacts, at three times the cost of mitigation the impact on the resource, to be placed in a community endowment for resource protection of the Pūpūkea shoreline; and (6) this board and penalties shall be detailed in an agreement to be signed by the developer, DPP, MPW, and the Pahoe Road neighbors before any building, development, or operation permits applications are accepted by the City for this development.

The DPP's poor enforcement track record regarding this development has put a tremendous burden on the community to be the police. This is unfair and inappropriate. Therefore, if the SMP is approved, it must realistically consider DPP's lack of enforcement and instead provide the community, with eyes and ears on the ground, the ability to monitor and enforce the requirement of "no adverse impact" on the resources at stake.

#### **c. Sustainable Net-Zero Development and Operations**

The City and County of Honolulu is becoming a leader in sustainable and net-zero development, in line with local and state goals to address the looking climate crisis and vexing pollution such as plastic pollution along our shorelines.

The Committee should impose a condition, all related to protection of the SMA and CZMA values and policies, that requires this development to: (1) meet USGBC Green Building Standards for Gold LEED or equivalent, (2) achieve net-zero impact (including from parking, waste, retail, and food operations) within three years of the granting of the first building permit, and (3) prohibit the sale and use of single-use plastics, styrofoam, and non-recyclable products from or on the site.

Given the visibility of this last remaining open lot along the coast, the development should be of the highest quality in terms of design, construction, and sustainability, and not become an eye-sore, low-class "cluster" full of food trucks, litter, and traffic that thrives on unsustainable, throw-away tourism.

**d. Good Community Stewardship**

The developer has promised, many times, to be good community stewards yet has done nothing other than enhance its commercial operations, which include sending thousands of visitors a year "over" to the Beach Park and MLCD with plastic containers, trash, food, snorkel gear, polluting sunscreen, and lack of knowledge of the cultural and ecological importance of the area, let alone the city and state rules that protect these two key resources.

The Council should impose a condition, to protect the coastal and cultural resources of this area, that the development: (1) commit to a cooperative cultural and environmental education program, on site, for all visitors and routinely for all employees, in which which MPW would be willing to participate as trainers; (2) posting of plentiful, attractive, accurate education signage on site regarding the importance of protection cultural and environmental resources; (3) prohibit customers from leaving the site with food containers, litter, or any items the use of which is prohibited in the beach park or MLCD; and (4) prohibit the sale of sunscreen that is not "reef safe" in compliance with SB2571 (effective 2021).

**e. Funding for the Pūpūkea Beach Park and Pūpūkea MLCD Master Plan**

The SMP would allow this commercial developer to gain huge economic profit - in perpetuity – from of the precious natural resources of the North Shore, without any requirement of give back or compensation to the natural resources held in trust for the people of Hawai'i by the city, state, or community.

Therefore, to mitigation the negative costs of this development and to ensure no adverse impact, as required by law, the City should required the development to fund **50%** of the cost of the implementation of the Master Plan for the Pūpūkea Beach Park and the cost of the creation and implementation of the Pūpūkea MLCD Master Plan by the State Department of Land & Natural Resources. To ensure this is done, the development shall deposit no less than \$2 million each year, for the first ten years, then no less than that amount plus 10% each year increase, to a special fund created by the City for such purposes to support the effective implementation of the Pūpūkea Beach Park and Pūpūkea MLCD Master Plans.

**Other Unaddressed Issues**

In addition, the proposed SMP does NOTHING to address – and should impose conditions to mitigate:

1. Traffic congestion that will increase around the site and along Pūpūkea Road, particularly with modified/reduced ingress off Kamehameha Highway and an additional turning lane;
2. Increased risk to pedestrian safety from more highway crossings and more traffic, and the lack of mention now of the promised crosswalk;
3. The misrepresentations to the Pahoe Road neighbors about the use of Pahoe Road (stating in responses to the Pahoe Road neighbors that the road will not be used at all, and stating in responses to MPW that Pahoe Road may be used for maintenance and deliveries);
4. That the Food Trucks are **not mobile** (they do not move off site at night), and are essentially **SIX NEW RESTAURANTS** on the site, generating wastewater, litter, odors, and noise, and using electricity, water, and traffic, directly across from the marine protected area of statewide importance, which is inconsistent with the intent of the Sustainable Communities Plan, 205A, and the CZM law.

**Conclusion**

For these reasons, MPW asks that the Council reject this SMP in full, stay the process, and/or impose the strict additional five conditions to ensure our public trust resources are fully protected.

***Ua Mau ke Ea o ka 'Āina i ka Pono***

Mahalo, 

Denise Antolini, President, MPW Board of Directors



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**From:** CLK Council Info  
**Sent:** Wednesday, November 14, 2018 7:44 AM  
**Subject:** Council/Public Hearing Speaker Registration/Testimony

## Speaker Registration/Testimony

Name James McCay  
Phone 8083210027  
Email jmccay@hotmail.com  
Meeting Date 11-14-2018  
Council/PH Committee Council  
Agenda Item Resolution 18-245 CD1  
Your position on the matter Oppose  
Representing Self  
Organization  
Do you wish to speak at the hearing? No

Aloha & thank you for your service. I strongly oppose this and urge the council to support Mālama Pūpūkea Waimea position to :

(1) deny the SMA Major Permit for failure to comply with the SMA and CZM laws,  
(2) defer consideration until the resolution of the two pending contested case petitions, and  
(3) impose five strict conditions to protect the coastal and community resources:

Written Testimony

1. Clean Hands and Community Transparency.
2. No Adverse Impact through Neutral Expert Monitoring and Stipulated Penalties.
3. Sustainable Net-Zero Development and Operations
4. Good Community Stewardship
5. Funding for the Pūpūkea Beach Park and Pūpūkea MLCD Master Plan

Sounds like good logic to me and much more in line with coastal and community progress.

Mahalo!  
James

Testimony Attachment  
Accept Terms and Agreement 1



November 14, 2018

Ernie Martin, Chair  
Kymberly Marcos Pine, Vice Chair  
Carol Fukunaga  
Ikaika Anderson  
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**b. The EIS for the Permit Was Flawed and Must Be Rejected**

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The matters raised in those challenges to the prior and current (minor) SMA permits for the property involve significant matters of public interest, including the appropriate valuation of SMA permit applications, fair and transparent treatment of the community, and cumulative impacts. In addition, as DPP admits in its report to the Council, the development *has not fulfilled the conditions of its current SMA permit*.

The City's inexplicable inaction on these two contested case petitions has allowed the developer to operate in a virtually lawless "wild wild west" – yet DPP has proceeded, a good pace, to process the developer's request for a Major SMA Permit and to allow operations in clear violation of the current SMA permit. This is not just, fair, or equitable to the community – or the integrity of the City itself. Nor does it comport with the spirit or letter of the SMA and Coastal Zone laws. DPP's action have violated basic agency administrative best practices and due process, have been arbitrary and capricious, and demonstrate an abuse of discretion.

Nor has the City or Hanapohaku disclosed the accurate and complete resolution of the numerous fines imposed for multiple health, safety, and permitting violations on this property, at one point totaling over \$100,000. At one point, DPP acknowledged that it was accepted "10 cents on the dollar" for the fines owed by Hanapohaku to the City! This is terrible public policy that clearly undermines DPP's authority as a regulatory and enforcement body. This improper practice must not be glossed over by the Council; the practice should be "outed" and changed through the resolution of the legal process.

Without full resolution of these legal challenges to the City's permitting of the current operations, and all of the violations, the City should not even be considering a proposed SMA Major permit to allow a permanent development and to cement the adverse footprint and impact of operations on this site.

### **3. If the Council Approves this Permit, It Must Impose Five New Conditions**

Should this Council approve the Permit, then it must uphold its public trust responsibilities by imposing five addition strict conditions on the Permit, as follows:

#### **a. Clean Hands and Community Transparency.**

All legal proceedings - including contested case matters and appeals; violations of city, state, or federal law; fines; and legal actions or lawsuits involving the developers in their personal or business capacity - must be fully resolved and completely disclosed to the community before any building, development, or operation permits applications are accepted by the City for this development.

#### **b. No Adverse Impact through Neutral Expert Monitoring and Stipulated Penalties.**

The City must ensure that the development has no adverse impact on public trust coastal zone resources and access – including the Kamehameha Highway, the Pūpūkea Beach Park, and the Pūpūkea Marine Life Conservation District.

Therefore, as a condition of the SMP, the developer must: (1) agree to the appointment of a four-member neutral scientific board of experts, to be appointed one by DPP, one by the developer, one by MPW, and one by the Pahoe Road neighborhood; (2) the board will review and monitor the existing conditions of the permit, especially the potential impacts of marine and public resources such as the highway, beach park, and MLCD; (3) the board will ensure full disclosure of accurate and complete reporting information to the community every four months via a neutral web site and public meetings each quarter with the community association and neighborhood board; (4) the developer shall pay the market rate for the expert board time and expenses, and (5) the board shall set stipulated "impact" penalties for exceedences of the project impacts, at three times the cost of mitigation the impact on the resource, to be placed in a community endowment for resource protection of the Pūpūkea shoreline; and (6) this board and penalties shall be detailed in an agreement to be signed by the developer, DPP, MPW, and the Pahoe Road neighbors before any building, development, or operation permits applications are accepted by the City for this development.

The DPP's poor enforcement track record regarding this development has put a tremendous burden on the community to be the police. This is unfair and inappropriate. Therefore, if the SMP is approved, it must realistically consider DPP's lack of enforcement and instead provide the community, with eyes and ears on the ground, the ability to monitor and enforce the requirement of "no adverse impact" on the resources at stake.

#### **c. Sustainable Net-Zero Development and Operations**

The City and County of Honolulu is becoming a leader in sustainable and net-zero development, in line with local and state goals to address the looking climate crisis and vexing pollution such as plastic pollution along our shorelines.

The Committe should impose a condition, all related to protection of the SMA and CZMA values and policies, that requires this development to: (1) meet USGBC Green Building Standards for Gold LEED or equivalent, (2) achieve net-zero impact (including from parking, waste, retail, and food operations) within three years of the granting of the first building permit, and (3) prohibit the sale and use of single-use plastics, styrofoam, and non-recyclable products from or on the site.

Given the visibility of this last remaining open lot along the coast, the development should be of the highest quality in terms of design, construction, and sustainability, and not become an eye-sore, low-class "cluster" full of food trucks, litter, and traffic that thrives on unsustainable, throw-away tourism.

**d. Good Community Stewardship**

The developer has promised, many times, to be good community stewards yet has done nothing other than enhance its commercial operations, which include sending thousands of visitors a year “over” to the Beach Park and MLCD with plastic containers, trash, food, snorkel gear, polluting sunscreen, and lack of knowledge of the cultural and ecological importance of the area, let alone the city and state rules that protect these two key resources.

The Council should impose a condition, to protect the coastal and cultural resources of this area, that the development: (1) commit to a cooperative cultural and environmental education program, on site, for all visitors and routinely for all employees, in which which MPW would be willing to participate as trainers; (2) posting of plentiful, attractive, accurate education signage on site regarding the importance of protection cultural and environmental resources; (3) prohibit customers from leaving the site with food containers, litter, or any items the use of which is prohibited in the beach park or MLCD; and (4) prohibit the sale of sunscreen that is not “reef safe” in compliance with SB2571 (effective 2021).

**e. Funding for the Pūpūkea Beach Park and Pūpūkea MLCD Master Plan**

The SMP would allow this commercial developer to gain huge economic profit - in perpetuity – from of the precious natural resources of the North Shore, without any requirement of give back or compensation to the natural resources held in trust for the people of Hawai‘i by the city, state, or community.

Therefore, to mitigation the negative costs of this development and to ensure no adverse impact, as required by law, the City should required the development to fund **50%** of the cost of the implementation of the Master Plan for the Pūpūkea Beach Park and the cost of the creation and implementation of the Pūpūkea MLCD Master Plan by the State Department of Land & Natural Resources. To ensure this is done, the development shall deposit no less than \$2 million each year, for the first ten years, then no less than that amount plus 10% each year increase, to a special fund created by the City for such purposes to support the effective implementation of the Pūpūkea Beach Park and Pūpūkea MLCD Master Plans.

**Other Unaddressed Issues**

In addition, the proposed SMP does NOTHING to address – and should impose conditions to mitigate:

1. Traffic congestion that will increase around the site and along Pūpūkea Road, particularly with modified/reduced ingress off Kamehameha Highway and an additional turning lane;
2. Increased risk to pedestrian safety from more highway crossings and more traffic, and the lack of mention now of the promised crosswalk;
3. The misrepresentations to the Pahoe Road neighbors about the use of Pahoe Road (stating in responses to the Pahoe Road neighbors that the road will not be used at all, and stating in responses to MPW that Pahoe Road may be used for maintenance and deliveries);
4. That the Food Trucks are **not mobile** (they do not move off site at night), and are essentially **SIX NEW RESTAURANTS** on the site, generating wastewater, litter, odors, and noise, and using electricity, water, and traffic, directly across from the marine protected area of statewide importance, which is inconsistent with the intent of the Sustainable Communities Plan, 205A, and the CZM law.

**Conclusion**

For these reasons, MPW asks that the Council reject this SMP in full, stay the process, and/or impose the strict additional five conditions to ensure our public trust resources are fully protected.

***Ua Mau ke Ea o ka 'Āina i ka Pono***

Mahalo, 

Denise Antolini, President, MPW Board of Directors

**TO:** City Council of the City and County of Honolulu

**FR:** Joe Wilson, Iwia Place, Haleiwa, HI 96712

**RE:** Testimony in **Opposition** to Resolution 18-245 CD1: SMP for the Development of the Pupukea Rural Community Commercial Center – (2018/SMA-41), Developer Hanapohaku LLC Hearing, 10:00 am, Wednesday, November 14, 2018

Council Chair Martin, Vice Chair Pine, and City Council Members:

As a long-time resident of north shore O'ahu, I write to echo the testimony of Mālama Pūpūkea-Waimea (MPW) in **strong opposition** to Resolution 18-254 CD1 that would grant a Special Management Area (SMA) Use Permit (SMP) for the proposed development by Hanapohaku LLC of the "Food Truck Mall at Sharks Cove."

MPW asks, **first**, that the Council **deny the permit** as inconsistent with the City and County SMA law and State of Hawai'i Coastal Zone law. **Second**, MPW asks that the Council **stay any proceedings** on the Major SMA permit given that there are *two pending* contested case hearings filed by MPW against the City and County Department of Planning & Permitting (DPP) for a series of four improper "minor" SMAs for development on this property. Should the Council nonetheless pass this unwise resolution, then **third**, MPW requests that the Council **impose five additional conditions** to ensure compliance with the law, which requires the avoidance of impacts on important public trust resources.

As brief background, MPW wishes to alert the Council that the community has raised repeated major objections to the brazen "kapakahi" development and illegal operations that have taken place on these parcels since the current landowner acquired this portion of the old Ni'imi property in 2014.

Without consulting the community, Hanapohaku LLC immediately started operating an illegal Food Truck Mall, with over 10 trucks and a rash of other noisy, polluting, and lucrative activities, on this already-congested location along Kamehameha Highway. These parcels are directly across from the highly scenic and fragile Pūpūkea Beach Park, which borders and protects the Pūpūkea Marine Life Conservation District, one of only three such marine protected areas on O'ahu. The spillover impacts on public trust resources and the negative effects on pedestrian safety, traffic, parking, and accessibility to the ocean were significant and direct - and have lasted for over four years with only minor abatement and then only due to enormous community/neighbor pressure and innumerable complaints to DPP among other agencies.

The strong community opposition was evident at a special meeting of the North Shore Neighborhood Board in April 2016, attended by 180 people.

*This developer with unclean hands is now asking the Council to rush through a Major SMA with a proposed plan for permanent, irreversible development of the site. DPP's permit conditions still do not ensure adequate protection for the coastal environment and – inexplicably – allow a cluster of at least six controversial food trucks on site. For the following reasons, MPW asks that the Council really dig into and consider the sordid history and context of this development – and deny, defer, or impose strict conditions.*

### **1. The SMP Should Be Denied**

MPW incorporates by reference here its two sets of comments on the developer's Draft EIS, in particular those comments regarding environmental impact and traffic.

#### **a. The Major Permit Is Not Consistent with the SMA or Coastal Zone Laws and Should Not Be Granted**

The proposed development is not consistent with the State of Hawai'i Coastal Zone Management Act, HRS Chapter 205A, or Chapter 25 ROH. HRS 205A-26(2) puts the burden on the City and the developer to demonstrate that "the development **will not** have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options." (Emphasis added.) See also ROH 25-3.2(b).

The record shows that there are too many unanswered questions and indications of significant potential impact such that the development cannot meet this standard. For example, the City and County of Honolulu's Master Plan for Pūpūkea Beach Park, which borders and protects the Pūpūkea Marine Life Conservation District (MLCD) has not been implemented and funded. The Beach Park is already over- run with visitors, commercial and recreational users, and group events such as dive operations. The vegetation and pathways are severely

eroded from foot traffic. Except for the areas where MPW has undertaken, with permits, four phases of native plant landscaping and educational sign installation -- and a community driven *and funded* effort to renovate the bathrooms and the basketball courts, led by Council Chair Martin -- there have been no efforts by the City or State to mitigate impacts of the excessive visitors to the beach park and MLCD. The resources and community, including MPW, has borne the brunt of the impacts and is doing its best to plead for resources from the government agencies responsible for stewardship.

Therefore, for the City to move ahead with this Permit would be a breach of its duty to protect public recreation areas, water quality, and wildlife. The City has not made an effort to implement the Beach Park Master Plan, and the State also does not even have a management plan for the MLCD. While the agencies ignore the needs of the North Shore, it is an increasingly popular destination for at least half of all visitors to this island, and thus under never-ending pressure from an extraordinarily high level of tourism, traffic, trash, and non-point source pollution. This development will only make things worse, not better.

In this context, the City cannot meet the burden under the law to ensure that the North Shore's precious public trust assets will not be negatively impacted by the development. The creation of a "Food Truck Mall" on this property, and commercial operations such as a retail and a restaurant, with all the attendant spillover impacts on the Beach Park and MLCD, are irreversible. MPW is unaware of any analysis by the City that independently assesses the impacts of this development on the Coastal Zone and SMA values protected by the law. The duty is on the City and the developer, not the public, to prove no impact.

As detailed more in MPW's comments on the DEIS, the risk of negative impacts from above-ground run off (non-point source pollution) and below-ground wastewater migration is significant, contrary to the cursory findings of DPP. Water still flows downhill. Non-point source pollution and wastewater will flow above and below the highway into the Beach Park and the MLCD, which is directly across the road. In fact, the development will direct waste flows into a storm drain that has a direct connection to an open channel that leads, in a very short distance, directly into the sand and shoreline of the MLCD.

#### **b. The EIS for the Permit Was Flawed and Must Be Rejected**

As indicated in the lengthy set of MPW comments on the DEIS (attached to MPW's testimony at the public hearing on the SMA), showing the **non-responses** by G70/Hanapohaku, the underlying Final EIS for this project is also flawed and should be rejected. MPW incorporates all of those SMA Hearing and DEIS comments here and ask the Council to review the EIS, in full, including all of the extensive public comments.

MPW along with many community members who received similar "non-responsive responses" is impressed by G70's ability to dance around and flat out just ignore key questions from the community. The extreme dismissal of community concerns continues a pattern of bad faith conduct by this development. In public, the developer will say it takes the public concerns seriously. However, its actions -- and the cursory way it handled public comment on the DEIS -- shows the true character of this developer.

In addition to Hanapohaku and DPP not taking comments of the public seriously, Hanapohaku has introduced a completely new alternative in the FEIS, *which therefore evaded public comment*. This alternative that -- although it sounds smaller in scale -- actually proposes **ten food trucks!** There is no apparent reason, other than deliberate sandbagging, that Hanapohaku did not disclose this alternative to the public in the DEIS. It portends that the developer will ask for more food trucks on site in the future. **The FEIS is fatally flawed and therefore the SMA, which relies on the validity of the FEIS, must be rejected.**

#### **2. City Council Action on this Permit Must Be Stayed Pending Resolution of the Two Contested Case Hearing Petitions**

MPW objects to the City even processing this SMA when MPW has **two pending unresolved contested case hearing requests against the prior four SMAs** for this project.

One of those petitions (filed in March 2016, over two years ago) has, after over a long delay, been assigned a now-second hearing officer and has a briefing and hearing schedule. The other petition (filed September 2017, over a year ago) has *yet to be assigned* to a hearing officer, despite numerous requests by MPW for consolidation and assignment of a hearing officer.

The matters raised in those challenges to the prior and current (minor) SMA permits for the property involve significant matters of public interest, including the appropriate valuation of SMA permit applications, fair and transparent treatment of the community, and cumulative impacts. In addition, as DPP admits in its report to the Council, the development *has not fulfilled the conditions of its current SMA permit*.



The City's inexplicable inaction on these two contested case petitions has allowed the developer to operate in a virtually lawless "wild wild west" – yet DPP has proceeded, at a good pace, to process the developer's request for a Major SMA Permit and to allow operations in clear violation of the current SMA permit. This is not just, fair, or equitable to the community – or the integrity of the City itself. Nor does it comport with the spirit or letter of the SMA and Coastal Zone laws. DPP's actions have violated basic agency administrative best practices and due process, have been arbitrary and capricious, and demonstrate an abuse of discretion.

Nor has the City or Hanapohaku disclosed the accurate and complete resolution of the numerous fines imposed for multiple health, safety, and permitting violations on this property, at one point totaling over \$100,000. At one point, DPP acknowledged that it was accepted "10 cents on the dollar" for the fines owed by Hanapohaku to the City! This is terrible public policy that clearly undermines DPP's authority as a regulatory and enforcement body. This improper practice must not be glossed over by the Council; the practice should be "outed" and changed through the resolution of the legal process.

Without full resolution of these legal challenges to the City's permitting of the current operations, and all of the violations, the City should not even be considering a proposed SMA Major permit to allow a permanent development and to cement the adverse footprint and impact of operations on this site.

### **3. If the Council Approves this Permit, It Must Impose Five New Conditions**

Should this Council approve the Permit, then it must uphold its public trust responsibilities by imposing five additional strict conditions on the Permit, as follows:

#### **a. Clean Hands and Community Transparency.**

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#### **b. No Adverse Impact through Neutral Expert Monitoring and Stipulated Penalties.**

The City must ensure that the development has no adverse impact on public trust coastal zone resources and access – including the Kamehameha Highway, the Pūpūkea Beach Park, and the Pūpūkea Marine Life Conservation District.

Therefore, as a condition of the SMP, the developer must: (1) agree to the appointment of a four-member neutral scientific board of experts, to be appointed one by DPP, one by the developer, one by MPW, and one by the Pahoe Road neighborhood; (2) the board will review and monitor the existing conditions of the permit, especially the potential impacts of marine and public resources such as the highway, beach park, and MLCD; (3) the board will ensure full disclosure of accurate and complete reporting information to the community every four months via a neutral web site and public meetings each quarter with the community association and neighborhood board; (4) the developer shall pay the market rate for the expert board time and expenses, and (5) the board shall set stipulated "impact" penalties for exceedences of the project impacts, at three times the cost of mitigation the impact on the resource, to be placed in a community endowment for resource protection of the Pūpūkea shoreline; and (6) this board and penalties shall be detailed in an agreement to be signed by the developer, DPP, MPW, and the Pahoe Road neighbors before any building, development, or operation permits applications are accepted by the City for this development.

The DPP's poor enforcement track record regarding this development has put a tremendous burden on the community to be the police. This is unfair and inappropriate. Therefore, if the SMP is approved, it must realistically consider DPP's lack of enforcement and instead provide the community, with eyes and ears on the ground, the ability to monitor and enforce the requirement of "no adverse impact" on the resources at stake.

#### **c. Sustainable Net-Zero Development and Operations**

The City and County of Honolulu is becoming a leader in sustainable and net-zero development, in line with local and state goals to address the looming climate crisis and vexing pollution such as plastic pollution along our shorelines.

The Committee should impose a condition, all related to protection of the SMA and CZMA values and policies, that requires this development to: (1) meet USGBC Green Building Standards for Gold LEED or equivalent, (2) achieve net-zero impact (including from parking, waste, retail, and food operations) within three years of the granting of the first building permit, and (3) prohibit the sale and use of single-use plastics, styrofoam, and non-recyclable products from or on the site.

Given the visibility of this last remaining open lot along the coast, the development should be of the highest quality in terms of design, construction, and sustainability, and not become an eye-sore, low-class “cluster” full of food trucks, litter, and traffic that thrives on unsustainable, throw-away tourism.

#### **d. Good Community Stewardship**

The developer has promised, many times, to be good community stewards yet has done nothing other than enhance its commercial operations, which include sending thousands of visitors a year “over” to the Beach Park and MLCD with plastic containers, trash, food, snorkel gear, polluting sunscreen, and lack of knowledge of the cultural and ecological importance of the area, let alone the city and state rules that protect these two key resources.

The Council should impose a condition, to protect the coastal and cultural resources of this area, that the development: (1) commit to a cooperative cultural and environmental education program, on site, for all visitors and routinely for all employees, in which which MPW would be willing to participate as trainers; (2) posting of plentiful, attractive, accurate education signage on site regarding the importance of protection cultural and environmental resources; (3) prohibit customers from leaving the site with food containers, litter, or any items the use of which is prohibited in the beach park or MLCD; and (4) prohibit the sale of sunscreen that is not “reef safe” in compliance with SB2571 (effective 2021).

#### **e. Funding for the Pūpūkea Beach Park and Pūpūkea MLCD Master Plan**

The SMP would allow this commercial developer to gain huge economic profit - in perpetuity – from the precious natural resources of the North Shore, without any requirement of give back or compensation to the natural resources held in trust for the people of Hawai‘i by the city, state, or community.

Therefore, to mitigate the negative costs of this development and to ensure no adverse impact, as required by law, the City should require the development to fund **50%** of the cost of the implementation of the Master Plan for the Pūpūkea Beach Park and the cost of the creation and implementation of the Pūpūkea MLCD Master Plan by the State Department of Land & Natural Resources. To ensure this is done, the development shall deposit no less than \$2 million each year, for the first ten years, then no less than that amount plus 10% each year increase, to a special fund created by the City for such purposes to support the effective implementation of the Pūpūkea Beach Park and Pūpūkea MLCD Master Plans.

#### **Other Unaddressed Issues**

In addition, the proposed SMP does NOTHING to address – and should impose conditions to mitigate:

1. Traffic congestion that will increase around the site and along Pūpūkea Road, particularly with modified/reduced ingress off Kamehameha Highway and an additional turning lane;
2. Increased risk to pedestrian safety from more highway crossings and more traffic, and the lack of mention now of the promised crosswalk;
3. The misrepresentations to the Pahoe Road neighbors about the use of Pahoe Road (stating in responses to the Pahoe Road neighbors that the road will not be used at all, and stating in responses to MPW that Pahoe Road may be used for maintenance and deliveries);
4. That the Food Trucks are **not mobile** (they do not move off site at night), and are essentially SIX NEW RESTAURANTS on the site, generating wastewater, litter, odors, and noise, and using electricity, water, and traffic, directly across from the marine protected area of statewide importance, which is inconsistent with the intent of the Sustainable Communities Plan, 205A, and the CZM law.

#### **Conclusion**

For these reasons, MPW and other community members ask that the Council reject this SMP in full, stay the process, and/or impose the additional five conditions to ensure our public trust resources are fully protected.

With Aloha,

Joe Wilson

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**From:** CLK Council Info  
**Sent:** Wednesday, November 14, 2018 9:58 AM  
**Subject:** Zoning and Housing Speaker Registration/Testimony

## Speaker Registration/Testimony

Name	Mike Biechler
Phone	8083715090
Email	Biechler@Hawaii.edu
Meeting Date	11-14-2018
Council/PH Committee	Zoning
Agenda Item	Res 18-245 cd1
Your position on the matter	Oppose
Representing	Organization
Organization	Surfrider Foundation
Do you wish to speak at the hearing? Yes	
Written Testimony	
Testimony Attachment	
Accept Terms and Agreement	1

Written Testimony For 11/13/18 Council Meeting

RE: Resolution 18-245, CD1

To Whom it May Concern,

I, Thomas Naylor, am unable to attend todays hearing concerning the development of a rural community commercial center and improvements in Pupukea at Sharks Cove. I'm in support of the development and endorse Hanapohaku, LLC and its plan to create an environmentally conscious and safe place for business, commerce and the community to thrive. Our family has had our business there for 15+ years. The plan is sustainable and of the size and scope that would benefit the community and small businesses like ourselves. Our business currently employs local residents and services both locals and tourists alike. We have anywhere from 10-15 employees during shoulder and peak seasons who work 30 hours+ a week. As a resident of the North Shore for for 14+ years, I'd love to see this area cleaned up and have the development provide much needed infrastructure to an area that greatly could benefit from it.

Sincerely,

Thomas Naylor

\*NOTE: Attempted to submit online via website but kept getting error message

## Error

### Error

This page can't be displayed. Contact support for additional information.

The incident ID is: N/A.

**From:** Elen Atlas <elenatlas@hotmail.com>  
**Sent:** Wednesday, November 14, 2018 9:59 AM  
**To:** Jeff Overton  
**Cc:** michael@hanapohakulc.com; andrew@hanapohakulc.com  
**Subject:** Resolution 18-245 - SMP for the Pupukea Rural Community Commercial Center

Hello there,

I SUPPORT THE RURAL CENTER PROJECT AT SHARK'S COVE

We need the Pupukea Rural Community Commercial Center to be approved:

- The development plans for this project are the right scale for our rural community.
- It supports small businesses and brings jobs.
- The project brings goods and services for the local residents of Sunset Beach and Pupukea.
- The ocean at Shark's Cove will be protected with required drainage and runoff controls.

Mahalo,

Elen

**From:** Alessandra Bezzi <alessandrabezzi@hotmail.com>  
**Sent:** Wednesday, November 14, 2018 10:01 AM  
**To:** Jeff Overton  
**Cc:** michael@hanapohakulc.com; andrew@hanapohakulc.com  
**Subject:** Resolution 18-245 - SMP for the Pupukea Rural Community Commercial Center

Hi,

I SUPPORT THE RURAL CENTER PROJECT AT SHARK'S COVE

We need the Pupukea Rural Community Commercial Center to be approved:

- The development plans for this project are the right scale for our rural community.
- It supports small businesses and brings jobs.
- The project brings goods and services for the local residents of Sunset Beach and Pupukea.
- The ocean at Shark's Cove will be protected with required drainage and runoff controls.

Thanks so much,

Alex

**From:** Joseph Fullmer <josephfullmer76@gmail.com>  
**Sent:** Wednesday, November 14, 2018 9:56 AM  
**To:** Jeff Overton  
**Cc:** michael@halapohakullc.com; andrew@hanapohakullc.com  
**Subject:** Resolution 18-245 - SMP for the Pupukea Rural Community Commercial Center

Aloha,

I SUPPORT THE RURAL CENTER PROJECT AT SHARK'S COVE

We need the Pupukea Rural Community Commercial Center to be approved:

- The development plans for this project are the right scale for our rural community.
- It supports small businesses and brings jobs.
- The project brings goods and services for the local residents of Sunset Beach and Pupukea.
- The ocean at Shark's Cove will be protected with required drainage and runoff controls.

Thank you!

**From:** Joey Fullmer <joey@northshoretacos.com>  
**Sent:** Wednesday, November 14, 2018 9:53 AM  
**To:** Jeff Overton  
**Cc:** Michael Hodge; Andrew Yani  
**Subject:** Resolution 18-245 - SMP for the Pupukea Rural Community Commercial Center

Aloha,

I SUPPORT THE RURAL CENTER PROJECT AT SHARK'S COVE

We need the Pupukea Rural Community Commerical Center to be approved:

- The development plans for this project are the right scale for our rural community.
- It supports small businesses and brings jobs.
- The project brings goods and services for the local residents of Sunset Beach and Pupukea.
- The ocean at Shark's Cove will be protected with required drainage and runoff controls.

Best,

Joseph Fullmer



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**From:** CLK Council Info  
**Sent:** Wednesday, November 14, 2018 2:55 PM  
**Subject:** Council/Public Hearing Speaker Registration/Testimony

## Speaker Registration/Testimony

Name Marc Hill  
Phone 2398487242  
Email hawaiianflyin@hotmail.com  
Meeting Date 11-14-2018  
Council/PH Committee Council  
Agenda Item CR-376 Resolution 18-245, CD1.  
Your position on the matter Oppose  
Representing Self  
Organization  
Do you wish to speak at the hearing? No

I endorse the testimony of Malama Pūpūkea-Waimea  
1) deny the SMA Major Permit for failure to comply with the SMA and CZM laws,  
(2) defer consideration until the resolution of the two pending contested case petitions, and  
(3) impose five strict conditions to protect the coastal and community resources:

### Written Testimony

1. Clean Hands and Community Transparency.
2. No Adverse Impact through Neutral Expert Monitoring and Stipulated Penalties.
3. Sustainable Net-Zero Development and Operations
4. Good Community Stewardship
5. Funding for the Pūpūkea Beach Park and Pūpūkea MLCD Master Plan (detailed in MPW testimony)

### Testimony Attachment

Accept Terms and Agreement 1

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**From:** CLK Council Info  
**Sent:** Sunday, November 18, 2018 10:50 PM  
**Subject:** Planning Speaker Registration/Testimony

## Speaker Registration/Testimony

Name	Joshua Echemendia
Phone	808-228-7588
Email	tronquitoconamor@yahoo.com
Meeting Date	11-18-2018
Council/PH Committee	Planning
Agenda Item	CR-376 Resolution 18-245, CD1
Your position on the matter	Oppose
Representing	Self
Organization	
Do you wish to speak at the hearing?	No
Written Testimony	Please deny the SMA major permit for failure to comply with the SMA and CZM laws
Testimony Attachment	
Accept Terms and Agreement	1